



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 24, 2011

CBCA 2341-RELO

In the Matter of NEAL K. MATSUMURA

Neal K. Matsumura, Honolulu, HI, Claimant.

Josie Pedrina, Human Resources Specialist, Civilian Personnel Advisory Center Hawaii, Department of the Army, Fort Shafter, HI; and Shari E. Madrid, Resource Management Officer, Army Installation Management Command, Pacific Region, Department of the Army, Schofield Barracks, HI, appearing for Department of the Army.

McCANN, Board Judge.

Claimant, Neal K. Matsumura, is a civilian employee of the Department of the Army. He claims that he is entitled to temporary quarters subsistence expenses (TQSE) on his permanent change of duty station (PCS) move from Japan to Hawaii. The Army has denied his request.

Background

Mr. Matsumura was issued travel orders by the Civilian Human Resources Agency (CHRA), Civilian Personnel Advisory Center (CPAC) Japan on November 24, 2009. Under these orders, Mr. Matsumura was to relocate from Camp Zuma, Japan, to Fort Shafter, Hawaii. These orders, under block 14, were checked "NO" for the authorization of TQSE. Under block 28, REMARKS OR OTHER AUTHORIZATIONS, number 14 states: "Cost will be borne by the gaining activity for TQSE, miscellaneous expenses, and . . . real estate transactions reimbursements. Gaining activity may amend this travel order to allow for TQSE, miscellaneous expenses and real estate transaction reimbursements." CPAC never properly contacted the gaining activity regarding these travel orders, nor did CPAC inform it of the arrival of Mr. Matsumura pursuant to the orders. Mr. Matsumura arrived in Hawaii

on December 18, 2009, and checked into the Hilton Hawaiian Village Hotel. On December 21, 2009, he reported to CPAC Hawaii. No one was expecting him.

Mr. Matsumura inquired about his TQSE at that time and was told to file his claim when he obtained permanent housing. On January 25, 2010, he checked out of the Hilton Hawaiian Village Hotel. On February 2, 2010, he filed his first voucher with the Defense Finance and Accounting Services (DFAS). Subsequently, DFAS and the Army Directorate of Logistics made a number of attempts to correct Mr. Matsumura's orders to allow for TQSE, but they were advised that they are prohibited from doing so. Accordingly, Mr. Matsumura's TQSE claims have been denied.

There is nothing in the record that indicates that the gaining activity ever intended to, or decided to, withhold authorization to pay for Mr. Matsumura's TQSE. In fact, the Inspector General (IG) in his subsequent investigation of this issue "[c]onfirmed with the gaining unit . . . that they remain willing to pay TQSE reimbursement for Mr. Neal Matsumura." No authorization to pay TQSE appeared on Mr. Matsumura's orders, and his orders were not amended prior to his move to reflect such an authorization. CPAC and the gaining activity did not communicate as they should have. We conclude that, had CPAC and the gaining activity properly communicated, orders reflecting that TQSE was authorized would have been issued prior to Mr. Matsumura's move.

Discussion

As a general rule an agency may not change a travel authorization retroactively. "TQSE must be authorized *before* temporary lodging is occupied and *may not be approved after the fact for any days that have passed before TQSE is initially authorized . . .*" JTR C5352-D.2.

An exception to this rule exists, however, if there is an error on the face of a travel authorization or if all the facts and circumstances surrounding the issuance of an authorization clearly demonstrate that some provision which was previously determined and definitely intended to be included was omitted through error or inadvertence in preparing the authorization. *Joel Williams*, GSBGA 16437-RELO, 04-2 BCA ¶ 32,769.

Diane F. Stallings, GSBGA 16793-RELO, 06-1 BCA ¶ 33,201.

The question in this case is whether this situation satisfies the requirement of "all the facts and circumstances . . . demonstrat[ing]" such error or inadvertence. We believe that it does.

It is totally within the discretion of the agency whether or not to authorize TQSE. *Melinda Slaughter*, CBCA 754-RELO, 07-2 BCA ¶ 33,633. The Federal Travel Regulation asks, “**Must my agency authorize payment of a TQSE allowance?**” and answers, “No, your agency determines whether it is in the Government’s interest to pay TQSE.” 41 CFR 302-6.6 (2009). “TQSE is a *discretionary, not mandatory*, allowance.” JTR C5350.

When box 14 was marked as TQSE not being authorized, that was only because CPAC had not checked with the gaining activity to obtain authorization. CPAC did not have the authority to check box 14 without such an authorization. CPAC clearly expected the gaining activity to make a decision on TQSE since it indicated on his orders that “[c]ost will be borne by the gaining activity for TQSE,” and the “[g]aining activity may amend this travel order to allow for TQSE.”

Here the gaining activity was free to authorize TQSE depending on whether or not such an authorization was in the Government’s interest. Since this activity was unaware of the drafting of the PCS orders, no decision was made regarding putting a TQSE authorization on the orders. Had CPAC properly communicated with the gaining activity, we find that TQSE would have been authorized on the orders. This finding is based on the fact the Army always intended that the proper authority would make a decision on whether TQSE would be authorized on the orders, which did not happen, and on the IG’s subsequent report. In that report, the IG indicated that the gaining activity “remain[s] willing to pay TQSE.” The report further does not indicate that the gaining activity ever offered the IG any reason why TQSE would not have been authorized originally, or would not have been in the Government’s interest. To the contrary, the gaining activity remained, as always, willing to, and intending to, pay. Accordingly, the only reason that TQSE was not authorized on Mr. Matsumura’s orders prior to his move was due to error or inadvertence relating to communications between CPAC Japan and the gaining activity. Such error or inadvertence is covered by the above-stated exception.

Decision

The claim for TQSE is granted.

R. ANTHONY McCANN
Board Judge